IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P.NO 1093 of 1994

Rattan Singh Sandhu ...PETITIONER

VERSUS

Punjab and Sind Bank and another ..RESPONDENTS

CORAM: HON'BLE MR.JUSTICE S.S.NIJJAR

PRESENT: Mr. H.S.Sran, Advocate for the petitioner

Mr.Kanwaljit Singh, Advocate for respondents.

S.S.NIJJAR, A.C.J.

The petitioner has filed this writ petition under Articles 226/227 of the Constitution of India, seeking the issuance of a writ in the nature of Certiorari quashing the order of dismissal dated 31.5.1993 passed by the Regional Disciplinary Authority, Amritsar (Annexure P-3) and the order dated 29.9.1993 (Annexure P-5) passed by the Appellate Authority, rejecting the appeal filed by the petitioner against the order of dismissal.

The petitioner was charged as under:-

> "Article of Charges.
>
> Sh. Rattan Singh Sandhu Officer while working as Branch Incharge of BO Chak Kare Khan, Distt. Amritsar disbursed subsidy in cash to 78 individuals which was

received from Punjab Scheduled Castes, Land Development and Finance Corporation, Chandigarh and Rural Development Agency. The subsidy was paid in cash without raising loans in their names and thus without creating the assets. Sh. Rattan Singh Sandhu is, therefore, charged as under:-

1.That Sh. Rattan Singh Sandhu failed to take all possible steps to ensure and protect the interests of the Bank.

2.That Sh. Rattan Singh Sandhu failed to discharge his duties with utmost integrity, honesty, devotion and deligence.

3.That Sh. Rattan Singh Sandhu committed acts unbecoming of a Bank Officer.

4.That Sh. Rattan Singh Sandhu failed to act otherwise than in his best judgment in the performance of his official duties and in exercise of powers conferred on him.

The above acts of Sh. Ratan Singh Sandhu constitute acts of misconduct in terms of Punjab and Sind Bank Officer Employees (Conduct) Regulations 1981 particularly under regulations 3 (i), (3) read with regulation 24. The above referred charges are based on statement of allegations mentioned in Annexure -II."

The allegations against the petitioner, on the basis of which the charge-sheet

had been framed, have been summarized by the Enquiry Officer in the Enquiry Report as under:-

> "Allegations: The main allegation against the CSO in brief are as under:-
>
> a) That he paid subsidy of Rs.1,36,499/- to 78 beneficiaries in cash without raising any loan in violation of bank lending norms.
>
> b)In only two cases loan application duly recommended were on record.
>
> ii) In six cases applications are on record, but without any recommendation of sponsoring agency.
>
> iii)In 70 cases, no sponsored application is on record.
>
> c)That CSO has misutilised his official position confidence reposed by bank in him and has misappropriated bank money, tarnished bank's image and has worked against the Govt. policies meant for the weaker section."

In the list of allegations, it was observed as follows:-

> "That above said acts of Sh. Rattan Singh Sandhu are in violation of HQ instructions and Banking norms issued from time to time. It transpires that Sh.Rattan Singh

> Sandhu misutilised his official capacity and confidence reposed in him by the Bank as Br. Incharge and misappropriated the amount to the tune of Rs.1,36,499.00. In connivance of the individuals (mentioned in Schedule IIA) in the manner stated above. His acts which besides tarnishing the image of the Bank also violated the Govt. Schemes framed for ameliorating the condition of weaker section of the society and upliftment of their economic and social status."

The petitioner submitted a detailed reply to the charge-sheet. He produced evidence in defence by appearing himself as his own witness. The statement made by the petitioner in his defence was corroborated by DW2 to DW5. The petitioner did not deny before the Enquiry Officer the allegation of making payments of subsidy in cash and non-disbursement of loan. This fact was also confirmed by the defence witnesses. The petitioner had contended that he was a victim of circumstances and the then existing law and order situation specifically in the area where the Branch Office at Chapkara Khan is situated. On appreciation of the entire evidence, the Enquiry Officer, therefore has held as under:-

> "It is, therefore, proved that the C.S.O has violated the Bank's lending norms by releasing the subsidy without raising loans. However, element of pressure due to disturbed condition in the area has also come to light."

With regard to the allegation at (c) in the list of allegations, the Enquiry

Officer has noted the evidence of MW-1 to MW4. The evidence of these witnesses reveals that they have not received any complaint against the CSO specifically from Government sponsoring agency recommending non-recommendation of loan cases of their respective departments. The Presenting Officer has also failed to produce any supporting evidence with regard to this allegation. The conclusion reached by the Enquiry Officer is as follows:-

> "The allegation is, therefore, proved to the extent that in 70 cases sponsored loan applications are not on record, but non-sponsoring/recommending of cases by sponsoring agency is not proved due to insufficient evidence brought on record."

With regard to allegation at C, it has been further observed by the Enquiry Officer that this allegation is very closely related to allegations no.1 and 2. The Enquiry Officer, therefore, states that while discussing and appreciating the evidence on allegations 1 and 2, the following facts have surfaced:-

> "i)That the CSO has released subsidy amount without raising the loan.
>
> ii)That the beneficiaries were interested in subsidy only and they were not interested in creation of assets.
>
> Iii)No complaint against CSO were reported.
>
> iv)That the CSO was working under pressure due

to disturbed condition in the area.

His successors S. Jodh Singh also remained tense and left the branch subsequently as stated by MW4.

However, the P.O. has not produced any evidence which could substantiate the charge that the C.S.O. misappropriated the amount of subsidy in connivance with the borrowers. The allegation is, therefore, not proved."

On the basis of the aforesaid findings on each allegation, the Enquiry Officer has held as follows:-

"Articles of charges:

In view of my above observations/findings on each allegation:

i)It is proved that the C.S.O. has disbursed subsidy amounting to Rs.1,36,499/- without raising any loan.

ii)The allegation that in 70 cases no sponsored loan application is on record is proved. However, non-sponsoring the cases could not be held as proved due to insufficient evidence brought on record.

Iii)Allegation of misappropriation of subsidy amount in connivance with borrower is not proved.

The act of C.S.O. having disbursed subsidy

> amount without raising loan in violation of Bank norms & condition of Govt. Schemes though do affect tarnish the overall image of the Bank but the element of pressure due to disturbed condition may not be ignored altogether."

The Enquiry report together with a complete record was sent to the Disciplinary Authority. After examining the enquiry report, the Disciplinary Authority came to the conclusion that the findings recorded by the Enquiry Officer are result of non-application of mind. By order dated 31.5.1993, the Disciplinary Authority did not fully agree with the findings of the Enquiry Officer and held that the allegations of the charges as per the charge-sheet are true. The Disciplinary Authority also noted that the petitioner is in habit of flouting instructions of superior for which he was charge-sheeted on 27.4.1989. But taking a lenient view, disciplinary authority censured him vide order dated 27.4.1989. Considering the question of the appropriate punishment, the Disciplinary Authority considered all the aggravating and extenuating circumstances, past record, and arrived at the conclusion that the following punishments shall meet the end of justice:-

> "CHARGE: That Sh. Rattan Singh Sandhu failed to take all possible steps to ensure and protest the interest of the Bank.
>
> PUNISHMENT: Dismissed from Bank's service.
>
> CHARGE: That Sh.R.S.Sandhu failed to discharge his

duties with utmost integrity, honesty, devotion and diligence.

PUNISHMENT: Dismissed from Bank's service.

CHARGE: Sh.R.S.Sandhu committed acts unbecoming of bank officer.

PUNISHMENT: Dismissed from Bank's service.

CHARGE: Sh. Rattan Singh Sandhu failed to act otherwise than in his best judgment in the performance of his official duties and in exercise of powers conferred on him.

PUNISHMENT: Dismissed from Bank's service."

The petitioner submitted a statutory appeal against the order dated 31.5.1993 to the Appellate Authority. The appeal has been dismissed, by order dated 29.9.1993, with the following observations:-

> "On scrutinising the contentions raised by the appellant, enquiry findings of the inquiring authority, order of Disciplinary Authority, and other relevant material on record, it does not absolve him of the allegations levelled against him.
>
> Considering the case in totality and after giving due weightage to overall situation, I do not find any justifiable grounds to disagree with the order of the Disciplinary Authority and I am of the view that punishment awarded by the Disciplinary

Authority, Regional Manager RD-II, Amritsar is in consonance with the gravity of misconduct. As such I hereby confirm the punishment so awarded. The appeal is as such disposed off.

Sd/-Deputy General Manager,
(Appellate Authority)"

The petitioner has challenged the aforesaid orders, on a number of grounds. He submits that the impugned orders suffer from the vice of non-application of mind. According to the learned counsel for the petitioner, this is evident, for a number of reasons. He submits that copy of the Enquiry Report was not sent to the petitioner to file an effective representation before the Enquiry Officer differed and reversed the findings recorded by the Enquiry Officer. He points out that both the Disciplinary Authority as well as the Appellate Authority have totally ignored that there was no complaint from the public or from the authorities who had sanctioned the subsidy. Both the Disciplinary Authority and the Appellate Authority ignored the categoric finding of the Enquiry Officer about the disturbed law and order situation in the area in which the Branch was located. Both the authorities also ignored that absolutely no loss was caused to the Bank. There was no misappropriation of any funds by the petitioner. The favourable record of the petitioner was totally ignored. At the time when the petitioner joined the Branch, it had 30 lacs to its credit, but when the petitioner left the Branch, the assets had increased to Rs.1.25 crores. Adverse past record was taken into consideration by the authorities, without issuing any show-cause notice to the petitioner.

The respondents have filed written statement. In the Preliminary Objections, it has been stated that the petitioner has failed to avail the remedy of review, as provided under Regulation 18 of the Punjab and Sind Bank Officers Employee (Discipline and Appeal) Regulations, 1981. The petition, therefore, deserves to be dismissed on this score alone. In the second preliminary objection, it is stated that Regulation 9 of the Bank lays down that the report of the enquiry shall be communicated alongwith the order. The said Regulation has been reproduced as under:-

> "9. Communication of orders.
>
> Orders made by the Disciplinary Authority under Regulation 7 or the regulation 8 shall be communicated to the officer employee concerned, who shall also be supplied with a copy of the report of inquiry, if any."

It is thereafter stated that the Enquiry proceeding and the copy of the day to day enquiry proceedings is always provided at the time of hearing. However, in the case of the petitioner, DisciplinaryAuthority sent the Enquiry report in advance and before imposing the penalty on the petitioner. It is further pleaded that as per the Regulation 7 (2) and (3), the Disciplinary Authority has statutory right to disagree with the findings of the Enquiry Officer and correctly passed a well reasoned order, taking into account all aspects of the matter. On merits, it is stated that "the conditions in Village Chapkar Khan were disturbing like other places in the State of Punjab in the said year. Therefore, it is irrelevant for the purposes of the instant case". The petitioner has admitted that subsidy is to be disbursed

alongwith the loan. The loan is to be granted to ensure the implementation and the liability of the beneficiary. Since the petitioner disbursed the subsidy without the loan, there could not be any creation of assets by the borrower. The petitioner has, therefore, illegally and in utter disregard of the standing instructions and norms of the Bank released the amount of subsidy, but did not advance the loan, thereby defeating the very object of the Government for the welfare of the people. It is further stated that an FIR dated 29.5.1993 has also been lodged against the petitioner for having embezzled and fabricated the documents and played fraud on the Bank. The respondents have also denied the allegation of the petitioner that the Enquiry report was not supplied, before the Disciplinary Authority passed the order dated 24.5.1993. The petitioner had enough time to make a representation. Since the petitioner did not respond or failed to state anything, after receiving the enquiry report in time, the order of dismissal was passed. In any case, no prejudice has been caused to the petitioner nor it is alleged or shown. It may be noticed that the reply was filed by the respondents on 20.10.1994. The petitioner has filed replication. During the course of hearing of this petition, the petitioner filed CM No.12008-09 of 2006, seeking permission to place on record an additional affidavit. In the application, it is stated that at the time of the filing of the replication dated 11.3.1995, facts stated in this affidavit were not available, and therefore, could not be explained in the replication. The application has been allowed and the additional affidavit has been taken on record. In this additional affidavit, reference has been made to the case FIR dated 29.5.1993 under

Sections 409, 468, 471 IPC registered at Police Station Verowal. It has been stated that a detailed investigation was conducted by the various Investigating Officers. During the investigation, statement of Paramjit Singh, A.G. And Zonal Manager, Punjab and Sindh Bank was recorded under Section 161 Cr.P.C. on 18.12.1994. In the statement, it has been stated that the petitioner has been falsely implicated in the case. It was stated that the petitioner is in no way responsible for any lapse. He has given clean chit to the petitioner by stating that the charge-sheet has been falsely issued to the deponent. Similarly, statements of some customers were also recorded whose accounts were subject matter of the charge-sheet/FIR. Further queries from the concerned Branch were answered by the Bank Manager in its letter dated 25.7.1995. In this letter, it has been stated that the balance of current accounts have been tallied till 30.4.1995, loan account upto 30.6.1995 and FDR upto 31.3.1995. The account holders also gave statements to the police during investigation and had all praise for the petitioner. The statement of the Branch Manager was supported by an official certificate dated 20.1.1995. On the basis of the investigation, the Investigating Officer through letter dated 5.12.1995 recommended the discharge of the petitioner. On 6.12.1995, the petitioner has been discharged by the Court of Competent jurisdiction.

I have heard the learned counsel for the parties at length and perused the paper-book.

Mr. Sran, learned counsel appearing on behalf of the petitioner has submitted that non-supply of the enquiry report to the petitioner before the

Disciplinary Authority differed with the findings of the Enquiry Officer has rendered the order of the Disciplinary Authority null and void. In support of this submission, the learned counsel has relied on the judgment of the Supreme Court in the case of **Managing Director, ECIL Hyderabad vs. B. Karunakar, JT 1993 (6) S.C.** 1.

According to the learned counsel, the order passed by the Disciplinary Authority is also liable to be quashed on the ground that the past record of the petitioner has been taken into consideration, without issuing show-cause notice to the petitioner. In support of this submission, the learned counsel has relied on the decisions of this Court in the case of **Surjit Singh Aulakh vs. High Court of Punjab and Haryana,** 1992(2) SLR 150 and **M.S.Bajwa vs. Punjab National Bank and others, 1994(1) SLR 131,** and the judgment of the Supreme Court rendered in the case of **The State of Mysore v. K. Masnche Gowda, AIR 1964 S.C. 506.** Learned counsel further argued that the disciplinary authority has wrongly relied on its own impressions about the period of terrorism in Punjab in order to come to the conclusion that the findings of the Enquiry Officer are based on no evidence. This, according to the learned counsel, is in breach of rules of natural justice. Learned counsel for the petitioner submitted that the order of the Appellate Authority is liable to be quashed as the petitioner was not given opportunity of hearing. Even otherwise, the order of the Appellate Authority is a non-speaking order, and therefore, liable to be quashed. He relies on the judgments rendered in the cases of **State of Punjab vs. K.R. Erry and Sobhag Rai Mehta, 1972 S.L.R. Page 836**, **Ram Chander vs.**

Union of India and others, 1986 (2) SLR 608 and A.L. Kalra vs. The Project and Equipment Corporation of India Ltd. 1984 (2) SLR 446.

An FIR was registered against the Officer on the same allegations. The Zonal Manager, has himself in a statement u/s 161 Cr.P.C., exonerated the petitioner. Other witnesses of the locality have totally supported the petitioner. According to the learned counsel, the petitioner deserved to be rewarded for working at a branch where his life was in danger. According to the learned counsel, the entire proceedings against the petitioner, reminds one of a witch hunt.

Learned counsel further submitted that the petitioner is entitled to be reinstated with all consequential benefits on the quashing of the orders of the disciplinary authority and the appellate authority.

Mr. Kanwaljit Singh, learned counsel appearing for the respondents submitted that the disciplinary authority has acted under the statutory service regulation. There is no provision for supplying the enquiry report to the delinquent Officer under Regulation 9 before the order is passed by the Disciplinary Authority. The Disciplinary Authority as well as the Appellate Authority have passed well-reasoned speaking orders. The Enquiry Officer had given virtually no reason in support of its findings exonerating the petitioner. The Disciplinary Authority examined the entire record itself and came to the conclusion that the findings of the Enquiry Officer have been recorded, without application of mind. The consideration of the relevant past record is permissible at the time when the disciplinary authority considers the question of punishment at the time when the order was passed

by the Disciplinary Authority as well as the Appellate Authority. The criminal, case against the petitioner on the basis of the FIR dated 29.5.1993 was still pending. Subsequent discharge of the petitioner would not affect the merits of the decision taken by the Disciplinary Authority as well as the Appellate Authority, on the basis of the material on record at the relevant time. In any event, no prejudice has been caused to the petitioner. Therefore, no relief can be granted to the petitioner. The writ petition deserves to be dismissed.

I have anxiously considered the submissions made by the learned counsel for the parties. I am of the considered opinion that the orders passed by the Disciplinary Authority and the Appellate Authority are liable to be quashed on a number of grounds. It was incumbent on the respondents to supply a copy of the enquiry report to the petitioner before the Disciplinary Authority decided to accept or reject the findings recorded by the Enquiry Officer. This view of mine finds support from the judgment of the Supreme Court rendered in the case of **Managing Director, ECIL, Hyderabad (supra).** In this case, the Supreme Court formulated the legal proposition, as follows:-

> " 2.The basic question of law which arises in these matters is whether the report of the Inquiry Officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee, is required to be furnished to the employee to enable

him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. This question in turn gives rise to the following incidental questions:

[i] Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

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[iv] Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments- Government and non-Government, public and private sector undertakings?

[v] What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

In answer to the aforesaid questions, the Supreme Court referred to the genesis of the law, on the subject of furnishing the report of the Enquiry Officer/authorities to the delinquent employee. On consideration of the proposition of law postulated in paragraph 2 of the judgment, the answer is given in paragraph 29, as under:-

“29. Hence it has to be held that when the Inquiry

> Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

The impugned orders having been passed in breach of rules of natural justice cannot be sustained on the basis of the ratio of law extracted above.

Mr.Kanwaljit Singh has, however, submitted that there is no provision under Rule 9 of the Service Regulation to supply a copy of the inquiry report to the delinquent official. This submission of the learned counsel is to be rejected, in view of the law laid down by the Supreme Court in the case of **Managing Director, ECIL, Hyderabad (supra).** In paragraph 30 (i) and (iv) it has been held as under:-

> "30. Hence the incidental questions raised above may be answered as follows:-

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

XXX XXX XXX

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in *Mohd. Ramzan Khan's case (supra)* should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of

> the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

Mr.Kanwaljit Singh, then submitted that no prejudice has been caused to the petitioner. This submission is wholly devoid of any merit. It is a matter of record that the Enquiry Officer had virtually exonerated the petitioner from all the charges. The Disciplinary Authority, without giving any opportunity of hearing to the petitioner, has disagreed with the findings of the Enquiry Officer and found the petitioner guilty of all the charges. Clearly, therefore, prejudice has been caused to the petitioner. The impugned orders are liable to be quashed on the ground that past record of the petitioner has been taken into consideration, without issuing any show-cause notice to him. In the case of **The State of Mysore(supra),** it has been held as follows:-

> "8.Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be

made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done, in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact

and meet the same."

In the case of **M.S.Bajwa (supra),** Jawahar Lal Gupta, J. held as follows:-

> "8..... The Punishing Authority not only relied on the report of the Enquiry Officer but also took into consideration the fact that the petitioner had committed various irregularities in the part on account of which major penalty of reduction of salary by three stages had been imposed vide order dated November 15, 1984. In view of this position, the Disciplinary Authority awarded the major penalty of demotion from Middle Management Grade Scale-II to Junior Management Grade Scale-I (Assistant Manager) on the petitioner. It is thus clear that matters beyond the charge which had been levelled against the petitioner had been taken into consideration. The previous punishments or the misconduct was never a part of the charge levelled against the petitioner. Consequently, he had no opportunity to meet this aspect of the matter. The disciplinary authority clearly appears to have been influenced by the fact that the petitioner had been accused of misconduct even prior to the issue of the present

> charge-sheet. It has influenced its judgment in determining the quantum of punishment. In fact it is after mentioning the previous punishments that the Authority has looked at the totality of the case. In my opinion, the Disciplinary Authority should have called upon the petitioner to explain his position if his previous conduct had to be taken into consideration. If such an opportunity had been granted, the petitioner could have possibly shown that even the Enquiry Officer had erred in finding that there was violation of clause 5 (3) of the Conduct Regulations. He could have further shown that once the petitioner had been punished for a particular misconduct, the fact could not be taken into consideration in a subsequent proceeding especially for the purpose of determining the quantum of punishment. The action of the authority in not giving the petitioner such an opportunity was violative of the principles of natural justice."

In my view, the aforesaid enunciation of law clearly supports the case of the petitioner. The order has been clearly passed in breach of rules of natural justice. Admittedly, the petitioner has not been given any opportunity of hearing. A perusal of the order passed by the Appellate

Authority clearly shows that it is a non-speaking order. In the case of **Ram Chander (supra)**, it has been clearly held by the Supreme Court that it is incumbent on the Appellate Authority to pass a detailed speaking order. It is not sufficient to merely reproduce the phraseology of the statutory rules under which the appeal has been decided. In paragraph 5 of the aforesaid judgment, it has been observed as follows:-

> "5.To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board

is liable to be set aside."

These observations clearly support the plea of the petitioner that he has been unfairly treated. In my view, the facts narrated above clearly demonstrate the innocence of the petitioner, and the arbitrariness of the attitude of the Disciplinary and the Appellate Authorities.

Even otherwise, the order of the Disciplinary Authority is clearly liable to be quashed as the findings of the Enquiry Officer have been reversed, on the basis of the impressions of the Disciplinary Authority of the law and order situation in the area in which the Branch of the petitioner had been situated in the Village Chak Kare Khan. None of the witnesses in the Enquiry Report has deposed on the aforesaid point. I find substance in the submissions of Mr.H.S.Sran that the findings of the Disciplinary Authority and the Appellate Authority are whimsical, based on no evidence and arbitrary. All the witnesses have supported the claim of the petitioner. Even MW1 to MW4 have stated that no complaint was ever received against the petitioner from the departments, which authorized the subsidy. The respondents have completely ignored the valuable service rendered by the petitioner in an area, known as the hotbed of terrorism. He worked at the aforesaid Branch, putting his life at risk. This fact is specifically noted by witnesses, appearing in the enquiry. Even his successor, left service due to dangerous conditions of life in the area. The Disciplinary Authority and the Appellate Authority, in my opinion, have exhibited callous disregard for human compassion, in passing the impugned orders. The allegation against the petitioner is that he did not create assets for the Bank, for

disbursing a subsidy given by the Government. In all, the amount disbursed is Rs.1,36,499/- amongst 78 beneficiaries. The amount is less than Rs.2000/- per beneficiary. One is left wonder-struck, as to what possible loan security was the Bank expecting, from these poor and the down-trodden beneficiaries. That too at a time which is known as the height of Terrorism. The beneficiaries of the meagre subsidy are from the marginalized, impoverished, residents of these remote villages. Did any of the authorities, sitting in their ivory towers even contemplate the difficulties, it would have created, to demand security, for loans to be disbursed to the wretched and the poor residents? Was it not the duty of the Disciplinary Authority and the Appellate Authority, to bestow their benign attention to the plight of these poor wretches queuing up to receive a subsidy of less than Rs.2000/- each. These rather disturbing questions tend to arise, from the manner in which the Disciplinary Authority and the Appellate Authority have brushed aside the entire evidence and the well reasoned findings of the Enquiry Officer. It appears as if the Enquiry Officer was more alive to the pitiable plight of these beneficiaries. The Enquiry Officer also recognized the sensitivity with which the petitioner, behaved. He categorically observed that an element of disturbed condition in the area has come to light. The Enquiry Officer further categorically observes that there is no misappropriation. The beneficiaries were not interested in creating loan assets. The petitioner was working under pressure, due to disturbed conditions. Keeping in view the aforesaid, I am of the opinion that the Disciplinary Authority has acted rather whimsically, if

not vindictively. Therefore, on this additional ground, the order of the Disciplinary Authority dated 31.5.1993 is liable to be quashed.

In my opinion, the situation in this case is very akin to the facts and circumstances in the case of **Shankar Dass vs. Union of India and another,AIR 1985 SC 772.** In that case, a clerk had been prosecuted for committing temporary embezzlement of Rs.500/-. He was prosecuted and found guilty of temporary embezzlement. The Magistrate, however, released him on probation. Not being able to digest the release of the employee on probation, the department dismissed him from service under Article 311 (2) of the Constitution of India on the basis of the conduct leading to conviction. The employee filed a civil suit in 1966 in the Court of Sub Judge First Class, Delhi, for setting aside his dismissal from service, mainly on the ground that since he was released under the Probation of Offenders Act, it was not permissible to the authorities to visit him with the penalty of dismissal from service. The civil suit was dismissed. The decree of the trial court was confirmed by the Additional Senior Sub Judge, Delhi, in January, 1968. He filed second appeal in the High Court of Delhi which was allowed by the learned Single Judge on 13.04.1971. The Government of India filed Letters Patent Appeal against that judgment which was allowed by a Division Bench on October 10, 1972. The employee filed Civil Appeal No.480 (N) of 1973 in the Supreme Court. Considering the peculiar facts and circumstances in which the employee had been placed, the C.J.I., Y.V. Chandruchud spoke thus:-

"6. The learned Magistrate, First Class, Delhi Shri Amba

Parkash, was gifted with more than ordinary understanding of law. Indeed, he set an example worthy of emulation. Out of the total sum of Rs.1,607.99 which was entrusted to the appellant as a Cash Clerk, he deposited Rs.1,107.99 only in the Central Cash Section of the Delhi Milk Scheme. Undoubtedly, he was guilty of criminal breach of trust and the learned Magistrate had no option, but to convict him for that offence. But it is to be admired that as long back as in 1963 when S. 235 of the Code of Criminal Procedure was not on the Statute Book and later refinements in the norms of sentencing were not even in embryo the learned Magistrate gave close and anxious attention to the sentence which in the circumstances of the case could be passed on the appellant. He says in his judgment: The appellant was a victim of adverse circumstances; his son died in February, 1962, which was followed by another misfortune; his wife fell down from an upper storey and was seriously injured; it was then the turn of his daughter who fell seriously ill and that illness lasted for eight months. The learned Magistrate concluded his judgment thus:-

> "Misfortune dogged the accused for about a year.... and it seems that it was under the

> force of adverse circumstances that he held back the money in question. Shankar Dass is a middle aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958."

It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the Second Proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may

perhaps not be entitled to be heard on the question of penalty since Cl. (a) of the second proviso to Art. 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

XXX XXX XXX

8. Accordingly, we allow this appeal, set aside the judgment of the Delhi High Court dated october 10, 1972 and direct that the appellant shall be reinstated in service forthwith with full back wages from the date of his dismissal until reinstatement. The Government of India will pay to the appellant the costs of the suit, the First Appeal, the Second Appeal, the Letters Patent Appeal and of this appeal which we quantify at Rupees five thousand. The appellant will report for duty punctually at this former place of work on April 1, 1985.

9. In this brief judgment we have referred to many unhappy facts. We must mention one more. We had

> adjourned this appeal after hearing it a while in order to enable the Government to consider whether the appellant could be reinstated in service with a reasonable adjustment in the payment of back wages. The learned counsel appearing on behalf of the Union of India showed us a letter written by a Deputy Secretary stating that the Hon'ble Minister of Agriculture desired him to say that the Court should decide the case on merits. We have done our modest best in that regard."

I am of the considered opinion that the aforesaid observations of the Supreme Court, are squarely applicable to the facts and circumstances of this case.

Mr.Kanwaljit Singh, however, submitted that in case the impugned orders are to be quashed, the matter may be remanded back to the Disciplinary Authority for a fresh decision. The learned counsel has relied on the observations made by the Supreme Court in the case of **Managing Director, ECIL Hyderabad (supra).** In paragraphs 30 and 31 of the aforesaid judgment, the Supreme Court observed as under:-

> "30 (v) ..... When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may

have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual....."

31.....The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority], there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee

> with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

A bare perusal of the aforesaid observations makes it abundantly

clear that the Supreme Court has cautioned that granting the relief of reinstatement with full back-wages in all cases is to be avoided. The Court should not mechanically set aside the order of punishment on the ground that the report of the inquiry was not furnished. Reinstatement made as a result of setting aside the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report. These observations will also be of no assistance to the respondents. In the present case, the orders passed by the Disciplinary Authority and the Appellate Authority have been held to be illegal and void, for a number of reasons, which have been set out above. The order of punishment has not been set aside only on the ground that the copy of the inquiry report was not furnished to the petitioner before the Disciplinary Authority disagreed with the findings of the Inquiry Officer. It would be a travesty of justice to remand the matter back to the Disciplinary Authority in the facts and circumstances of the present case. I am of the considered opinion that in the facts and circumstances of the present case, it would not be just and proper to compel the petitioner to again face the departmental proceedings, after having contested this litigation for the last 12 years. As noticed earlier, the order of dismissal was passed on 31.5.1993 and the order rejecting the appeal was passed on 29.9.1993. The petitioner has been out of service for almost 13 years. The petitioner seems to have been made a victim of the circumstances. Each and every witness has come and supported the case of the petitioner that there were threats from Terrorists. It has also come on record that no loss has been caused to

the bank. The charge of misappropriation has been specifically rejected by the Enquiry Officer. The only lapse of which the Enquiry Officer held the petitioner guilty was that he had disbursed subsidies, without creating loan accounts against the beneficiaries. None of the beneficiaries has complained. No official of the Government department has complained. In such circumstances, I am of the considered opinion that the petitioner has suffered enough for any imaginary administrative lapse that he may have committed. I, therefore, decline the prayer of the learned counsel for the respondents that the matter may be remanded back to the Disciplinary Authority for fresh decision.

In view of the above, the writ petition is allowed. Impugned orders dated 31.5.1993 and 29.9.1993 (Annexures P-3 and P-5) are quashed. The petitioner be reinstated in service with all consequential benefits i.e. continuity of service, back-wages, seniority etc. The needful be done as expeditiously as possible, but not later than four weeks from the receipt of a certified copy of this order. No costs.

(S.S.NIJJAR)
ACTING CHIEF JUSTICE

18.10.2006
MFK

NOTE:Whether to be referred to the Reporter or not:YES/NO